name, the resale pricing standards of Section 252(d)(3) of the Act, rather than the unbundled element pricing standards of Section 252(d)(1) of the Act, must apply. BellSouth argues that this result is compelled because Congress must have intended that competitors could provide retail service through combination of elements bought at unbundled elements rates only if they combine these elements with their own facilities.[3] Allowing a competitor to buy at unbundled rates and then combine the elements to provide service produces price "arbitrage," a result BellSouth claims Congress could not have intended.[4]

The Commission agrees that the issue is critical. If competitors are not able to use BellSouth's network elements at cost to provide service, viable competition is unlikely to grow. Moreover, the Commission rejects BellSouth's strained legal argument, which would require it to ignore the language and the structure of the statute.

The pricing for resale and the pricing for unbundled elements appear in two entirely different sections of the Act. Their terms cannot be cobbled together as BellSouth suggests. Section 252(d)(3) sets resale pricing standards "[f]or the purposes of section 251(c)(4)," the subsection which describes an incumbent LEC's duty to offer services for resale. The pricing standards of 252(d)(3) thus apply specifically to resale alone, and not to the sale of unbundled elements pursuant to an entirely different subsection, 251(c)(3).

Section 252(d)(1), in contrast, provides standards for pricing network elements "for purposes of subsection (c)(3)," the subsection which describes an incumbent LEC's ("ILEC") duty to sell unbundled elements. Unbundled elements must be sold at a price

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3 BellSouth Petition at 7.

4 BellSouth Petition at 8.

that is "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing . . . the network element," that is "nondiscriminatory," and that "may include a reasonable profit." Section 252(d)(1).

Section 251(c)(3) states that an incumbent LEC "shall" provide requesting carriers with "nondiscriminatory access to network elements on an unbundled basis" in accordance with, inter alia, the "requirements of . . . section 252." Furthermore, these elements must not only be provided at the cost plus formula prescribed in Section 252(d)(1); they must be provided "in such a manner that allows requesting carriers to provide such elements in order to provide such telecommunications service." Section 251(c)(3). The statute is plain on its face. The Commission must decline BellSouth's implied invitation to add the words "with their own facilities" after the final use of the word "elements" in the last sentence of Section 251(c)(3). The Commission also declines to adopt BellSouth's strained reading of the statute in which broad implications are garnered from BellSouth's interpretation of what Congress must have "intended." When a statute is plain on its face, its language is conclusive. See, e.g., Lynch v. Commonwealth, Ky., 902 S.W.2d 813, 814 (1995). See also Lincoln County Fiscal Court v. Dept. of Public Advocacy, Ky., 794 S.W.2d 162, 163 (1990) (where statute's words are "clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written").

Finally, BellSouth's insistence that the Commission's Order subjects it to injustice is apparently based upon the false premise that it will be unable to compete when its tariffed rate is substantially higher than the price at which a competitor can buy

unbundled elements to provide service. There are alternatives available to BellSouth other than attempting to convince this Commission to distort the statute. It may file an application to restructure its rates so that they more accurately reflect the cost of providing service. As with all issues brought before the Commission, such an application would be reviewed in the interest of providing Kentucky ratepayers affordable and reasonable prices.

Congress's intent is to drive telecommunications rates toward costs and to remove implicit subsidies from those rates. The Commission's Order in this case will, consistently with the federal mandate, help to accomplish these aims. To the extent subsidies are necessary, Congress enacted Section 254 of the Act, which provides for "explicit" universal service support. The Commission's current universal service proceeding, Administrative Case No. 360,[5] is the appropriate docket to consider such issues as subsidization of residential service.

BellSouth has previously taken prudent steps, such as filing for price cap rather than rate of return regulation, to position itself for the advent of local exchange competition. Altering its rates so that they more accurately reflect cost will be another such step, and will eliminate the extreme difference between the current resale rate and the unbundled element rate.

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[5] Administrative Case No. 360, Inquiry Into Universal Service and Funding Issues.

II. RESTRICTIONS ON SERVICES OFFERED FOR RESALE

Grandfathered Services

MCI requests clarification of the Commission's decision on grandfathered services. MCI's concern is that BellSouth is opposed to making grandfathered services available to any customers of new entrants, whether they are grandfathered customers of BellSouth currently receiving the service or new customers.[6] MCI is also concerned that the scope of the "limitations" referred to in the Order is unclear.

Grandfathered services are those which are no longer offered to new subscribers, but are continued to be offered to subscribers having the service at the time that it is withdrawn. To deny a subscriber who might consider changing carriers the opportunity to continue to receive the service would put the potential competitor at a competitive disadvantage relative to the ILEC.

BellSouth in its Best and Final offer agreed to resell all of its retail services with certain limitations. One of the services to be resold subject to limitations was grandfathered services. That limitation was that grandfathered services would not be available to new or additional customers. The FCC's order at paragraph 968 states that all grandfathered customers should have the right to purchase such grandfathered services directly from the incumbent or indirectly through a reseller.

The Commission's December 20, 1996 Order is clarified to state that a subscriber changing carriers from the ILEC to a reseller shall be entitled to receive that same

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6 MCI Petition at 7.

grandfathered service from a reseller who buys the service at the wholesale rate for the duration of the grandfathering period.

Promotions

MCI asked the Commission to clarify its Order that promotions lasting 90 days or less be made available for resale but that BellSouth need not provide these to MCI at any additional discount beyond the promotional rate itself. Promotional incentives take many forms. In some cases monthly charges are reduced or waived. In other cases nonrecurring charges such as installation may be waived. These types of incentives are common. MCI, under the Act, can resell any LEC tariffed service at the tariffed price less the wholesale discount and provide any promotional incentive it may consider necessary to meet a LEC's offering.

The Commission therefore clarifies its previous Order to state that services covered by a LEC's promotional offering are subject to the wholesale discount. However, the incentives are not. MCI or any other competing local exchange carrier ("CLEC") is free to package services with its own promotional incentive in any way it sees fit to respond to a similar promotional offering of a LEC.

Mandated Discounts

MCI requests that the Commission define and limit this category of services that BellSouth need not provide MCI for resale at any price. The Commission is not aware of any specific discount that BellSouth is mandated to offer. Should any such service arise in the future BellSouth should not be obliged to defer the mandated discounted

service at the mandated discount rate less any wholesale discount. The underlying services are available at the tariffed rates less the wholesale discount rate.

MCI may petition the Commission on a case-by-case basis challenging any restriction as to the terms or limitations contained in BellSouth's tariff.

Tariff Terms and Conditions

In its December 20, 1996 Order the Commission stated that services available for resale would be subject to the terms and conditions, including restrictions, found in BellSouth's General Subscriber Tariff. MCI requests modification of this policy to allow the company to challenge these terms, conditions and limitations before the Commission if they are deemed to be anticompetitive.

The Commission agrees with MCI and will modify its policy to allow MCI or any other CLEC to challenge tariffed terms, conditions or limitations before the Commission on a case-by-case basis.

Resale Rates

MCI has requested the Commission to establish two discount rates, one for a company providing its own operator services and one for a company purchasing operator services from the ILEC.

The Commission determined in Administrative Case No. 355 that ILECs will not be required to desegregate a retail service into more discrete retail services;[6] therefore this request to unbundle access to operator services from local services is denied.

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[6] Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, Order dated September 26, 1996, at 8.

III. BILLING SYSTEMS AND FORMAT

BellSouth asks the Commission to clarify its decision on the issue of billing systems and format to direct that a carrier access billing ("CAB") format be used for billing recall services and unbundled elements as opposed to using the actual CABs system.

MCI states that it is concerned with the format of the bill, not with the system used to produce the bill.[7] In its Order the Commission agreed with MCI's arguments that a CABs billing format was efficient and technically feasible. However, the Commission in its conclusion inadvertently omitted the word "formatted." Therefore, the Commission clarifies the decision to reflect that the bills rendered MCI will be in CABs format and that CABs software or hardware systems need not necessarily be used to produce the bill.

IV. UNUSED TRANSMISSION MEDIA

BellSouth argues in its petition for rehearing that unused transmission media ("dark or dry fiber") is neither a network element nor a retail telecommunications service and that it should not, therefore, be required to make this resource available to competitors. However, the Commission has not defined dry fiber based on either of these definitions. The Commission has defined dry fiber as a resource to the public switched network, in the same manner as access to poles, ducts, conduits, and rights-of-way. Dry fiber constitutes an access point to the public switched network in the same way as a pole, duct, conduit or right-of-way. The latter access points are neither a

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[7] MCI's post hearing brief at 42.

network element nor a telecommunications service available for resale and the Act has made these available to competing companies.

Therefore, the Commission's decision on unused transmission media is affirmed with the following clarification. MCI asked for clarification on its ability to rebut BellSouth's determination that unused transmission media is unavailable. The Commission finds that MCI should be permitted to petition the Commission if it can demonstrate that BellSouth is unwilling to cooperate. The Commission also amends this section of its Order to change the time period for which BellSouth must plan for the utilization of unused transmission media from five (5) years to three (3) years. This shorter time frame conforms to a more reasonable LEC planning cycle and will enable the carrier to review budgeting plans.

V. COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC

BellSouth seeks rehearing of the Commission's determination that the pricing for termination of local calls should be at total element long run incremental cost ("TELRIC") rather than tariff access rates. BellSouth asserts that its appeal of the FCC's order and rules on TELRIC pricing should cause the Commission to reconsider its use of TELRIC in this case, and that the Commission should require true-ups from the implementation of this Order until permanent rates are established after the federal litigation has been concluded. However, independent of any FCC action, the Commission concluded that interconnection should be priced at cost plus a reasonable profit based on Section 252(d)(1) of the Act. Thus, BellSouth's request is denied.

BellSouth also seeks rehearing of the Commission determination to permit bill and keep arrangements for no more than a year. The Commission has reconsidered its decision and will modify the Order to require reciprocal compensation from the outset of this contract, if the two parties do not agree to a bill and keep arrangement. As previously stated by the Commission, "the market will be best served by swift development of the necessary recording and billing arrangements to provide reciprocal compensation among local carriers."[8]

MCI has sought clarification regarding the applicability of interconnection rates set forth in Appendix 1 of the December 20, 1996 Order to compensation for exchange of local traffic. With the modification requiring reciprocal compensation, the rates in Appendix 1 are interconnection rates applicable at the outset of this contract. Should MCI or BellSouth become dissatisfied with the interconnection rates contained in Appendix 1, they may renegotiate rates to become effective upon the termination of this two-year contract.

VI. INTERIM LOCAL NUMBER PORTABILITY COST RECOVERY

BellSouth requests the Commission reconsider its decision that each LEC should bear its own cost for providing remote call forwarding as an interim number portability option, arguing that the Commission should instead set a cost-based price for remote call forwarding service. However, the Commission's original decision is consistent with the FCC's determinations and will provide an incentive to the ALECs to implement long term number portability. BellSouth's request is denied.

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[8] December 20, 1996 Order at 14.

VII. THE PROVISION BY BELLSOUTH OF ADDITIONAL TELRIC STUDIES

BellSouth requests rehearing of the Commission's determination that within 60 days it must provide TELRIC studies for unbundled network elements that do not have a TELRIC estimate listed in BellSouth's best and final offer including the Network Interface Device ("NID") and non-recurring charges. BellSouth asserts that producing such information at this time is unwarranted because of the judicial stay of the FCC's pricing rules. However, the Commission reached its decision without regard to the FCC's stayed pricing standards and instead made independent determinations of the appropriate cost study methodologies for Kentucky. The information requested is necessary to complete the appropriation. Therefore, BellSouth's request is denied.

VIII. PROCESS FOR ORDERING NETWORK ELEMENTS AND FOR REVIEW OF COST STUDY METHODOLOGIES

MCI has asked for the creation of an expedited process to review orders for additional unbundled network elements. The Commission declines to establish a specific process but notes that should MCI experience any difficulty in ordering additional unbundled network elements, it may file a petition with the Commission. Such a complaint will be handled as expeditiously as possible.

MCI requests that it be given an active role in the review of BellSouth's network element cost studies ordered to be filed. These BellSouth TELRIC studies will be filed in this proceeding in which MCI is clearly a party. Accordingly, the Commission declines to establish a separate proceeding for the review of the TELRIC cost studies.

IX. ROUTING OF 0+, 0-, 411, 611, AND 555-1212 CALLS

MCI requests the Commission to clarify its decision concerning the routing of 0+, 0-, 411, 611 and 555-1212 calls. The Commission had decided that it would not require BellSouth to furnish wholesale tariff services minus operator services since BellSouth has no tariffed service without operator services included. Thus, an ILEC will not be required to sever its tariffed services from 0+ and 0- services when an ILEC is reselling the ILEC's tariffed services. However, if an ILEC and a CLEC agree to a wholesale rate for a service without operator services, the Commission will accept such an arrangement. But, if a CLEC provides service through purchase of unbundled elements, then the ILEC shall provide customized routing for 0+, 0-, 411, 611 and 555-1212 calls. The Commission modifies its December 20, 1996 Order to eliminate the statement that BellSouth shall retain 0+, 0-, 411, 611 and 555-1212 calls on an interim basis. If an ILEC asserts that customized call routing is not technically feasible, it has the burden of proving its claim.

X. PERFORMANCE AND STANDARDS, QUALITY ASSURANCE, AND QUALITY CERTIFICATION

MCI requests that the Commission require BellSouth to prepare periodic comparative reports on its service quality to enable MCI to determine whether MCI's customers are receiving equal quality of service from BellSouth. However, BellSouth is required to provide the same quality of service to MCI as it provides to itself, and there does not appear to be any reason to assume BellSouth will not in good faith comply with this requirement. Should MCI have a basis on which to allege that a poorer quality of

service is being delivered to its customers than to BellSouth's, then it should immediately bring this matter to the Commission's attention through a petition.

The Commission, having considered the motions for reconsideration and clarification from BellSouth and MCI, and having been otherwise sufficiently advised, HEREBY ORDERS that its December 20, 1996 Order is affirmed in all respects except as modified herein.

Done at Frankfort, Kentucky, this 29th day of January, 1997.

By the Commission

DISSENT OF CHAIRMAN LINDA K. BREATHITT

I dissent only from the majority opinion on the issue of recombination of unbundled elements.

Section 251(c)(3) states that an incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. On its face, this would logically lead to the conclusion that recombination of the unbundled elements in any manner was contemplated by Congress.

However when taken in context with other sections of the Act, this conclusion fails. In particular if recombinations were contemplated, there would have been no reason for Congress to establish two distinct pricing programs - one for resale and one for network

element pricing. The establishment of two pricing arrangements is inconsistent with the idea of recombination of all the elements.

Secondly, the joint marketing prohibition in Section 271(e)(1) states that a telecommunications carrier that serves more that 5 percent of the nation's presubscribed access lines is restricted from jointly marketing its interLATA toll services with services obtained from the BOC via resale. This restriction is lifted when a new entrant purchases unbundled network elements.

It seems to me a loophole in the Act has been exposed. Commissions in Tennessee, Georgia, North Carolina and Louisiana have also recognized this.

The Act requires the elimination of implicit subsidies, which is a good thing in a competitive world. BellSouth's business rates need to come down. However, this Commission has long encouraged telephone price subsidies because they keep urban and especially rural residential rates lower. The Commission affirmed this policy again in Case No. 94-121 by freezing residential rates for a period of three years or until there is a universal service fund in place. The elimination of these subsidies should occur, but my concern is that it may occur too swiftly if competitors are permitted to recombine certain network elements. That leaves residential customers scratching their heads and trying to make sense of competition as their bills increase.

I do not have a crystal ball, nor would I be accomplished in its use if I did have one. I do not know BellSouth's plans on rate rebalancing; nor do I know how all this will ultimately shake out. The Commission has opened a docket on universal service with the intent of providing a safety net where necessary subsidies in rates have been

removed by competitive pricing; but will universal service come to the rescue of rural customers in time? I fear it may not. I respectfully dissent.

Linda K. Breathitt
Chairman

ATTEST:

Don Mills
Executive Director

C

EXHIBIT C

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of proposed agreements with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP DOCKET NO. 960846-TP DOCKET NO. 960916-TP ORDER NO. PSC-97-0309-FOF-TP ISSUED: March 21, 1997

FINAL ORDER APPROVING ARBITRATION AGREEMENT BETWEEN MCI TELECOMMUNICATIONS CORPORATION, MCIMETRO ACCESS TRANSMISSION SERVICES, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC.

BY THE COMMISSION:

I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the

appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section.

MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCIm) requested that BellSouth Telecommunications, Inc. (BellSouth or BST) begin good faith negotiations by letter dated March 26, 1996. Docket No. 960846-TP was established in the event MCIm filed a petition for arbitration of the unresolved issues. On July 30, 1996, AT&T Communications of the Southern States (AT&T) and MCIm filed a joint motion for consolidation with AT&T's request for arbitration with BST. By Order No. PSC-96-1039-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCIm filed its request for arbitration under the Act.

On August 19, 1996, American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. (ACSI) requested that the Commission consolidate its arbitration proceeding with BST with the petitions filed by AT&T and MCI. ACSI filed its petition for arbitration under Section 252 of the Act on August 13, 1996, and Docket No. 960916-TP was established. By Order No. PSC-96-1138-PCO-TP, issued September 10, 1996, ASCI's motion for consolidation was granted.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC Order, and requested a stay of the Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

On October 9 through 11, 1996, we conducted an evidentiary hearing for the consolidated dockets. On November 7, 1996, ACSI reached an agreement with BST that was subsequently approved at our November 12, 1996, Agenda Conference. ACSI filed a notice of withdrawal of its petition for arbitration on November 12, 1996.

On December 31, 1997, we issued Order No. PSC-96-1579-FOF-TP in which we arbitrated the remaining unresolved issues between MCIm and BST and AT&T and BST. In the Order, we directed the parties to file agreements memorializing and implementing our arbitration decision within 30 days. MCIm and BST filed their arbitrated Agreement with the Commission on January 30, 1997. They also

identified the sections of the Agreement where they still could not agree on the language to incorporate. On February 13, 1997, MCIm filed updates to the MCIm and BST Agreement. We considered the Agreement and the language which remained in dispute at our February 21, 1997, Special Agenda Conference. Our decisions on the arbitrated Agreement are set forth below.

II. ATTACHMENT A

The parties to the proceeding have agreed to the language in the sections identified in Attachment A to this Order, which by reference is incorporated herein. Section 252(e)(2)(B) states that the Commission can only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or the standards set forth in subsection (d) of Section 251 of the Act. Upon consideration, we find that the language upon which the parties agree is appropriate.

III. ATTACHMENT B

The parties to the proceeding have not agreed to language in the sections identified in Attachment B to this Order, which by reference is incorporated herein. Upon review, since we did not arbitrate the matters in Attachment B, we will not establish language for these sections. Accordingly, they shall not be included in the signed Agreement to be filed with this Commission.

IV. LANGUAGE IN DISPUTE

In Order No. PSC-96-1579-FOF-TP, we determined that if the parties could not agree on language to memorialize and implement our arbitration decision, they should each submit their proposed versions of the Agreement and we would choose the language that best reflects our decision. As mentioned above, the parties identified the sections of the Agreement where they were unable to reach agreement on the language to be incorporated. Our decisions on the language upon which the parties disagree is set forth below.

A. Attachment 1 - Price Schedule

Attachment 1 to the Agreement identifies the list of prices approved by the Commission. The parties cannot agree on introductory language discussing the General Principles, Local Service Resale, Unbundled Network Elements, etc. Most of the

language was included in subsequent attachments or was not addressed in the issues in the arbitrated proceeding. The only essential pieces of information in the introductory language are the local service resale discount amounts approved in our arbitration order. The parties have not even been able to agree on the language incorporating the discount amounts.

In addition, the parties cannot agree on all the services to be included in this price list. MCIm has listed rates only for services approved by the Commission. BST has incorporated those services plus additional services which it acknowledges the Commission did not order. BST has proposed interim rates for these services "so that if MCIm requires such services prior to the establishment of a permanent rate, there will be a rate available." MCI, on the other hand, states that "[a]ll pricing items not ordered ... are disagreed."

Upon consideration, we find that the local service resale amounts shall be included in the price list in Attachment 1, and that all introductory language shall be eliminated as nonessential to the Agreement.

We also find that the services and rates in this section shall consist only of those we approved. They include the following: 1) the items listed by MCIm on Attachment 1, pages 1-5 through 1-8, of its proposed Agreement. Those items match the list approved by the Commission in Order No. PSC-96-1579-FOF-TP; 2) the physical collocation rates contained in the Collocation Handbook attached to witness Scheye's testimony, and which were approved on an interim basis. See Exhibit 47; 3) the virtual collocation rates contained in BST's Access Tariff, which were approved on an interim basis; 4) rates for call termination and transport as approved in the order; 5) End office termination, per MOU - $.002; 6) Tandem switching, including transport, per MOU - $.00125; 7) BST has correctly set forth the Commission's ruling with respect to cost recovery of Interim Number Portability, and this provision should be included in the final Agreement; 8) the local service resale discount amounts should be included in the price list as follows:

Residential service - 21.83%
Business service - 16.81%

MCIm and BST have proposed different rates in their respective agreements for poles, ducts, conduits and rights of way. We find that since rates were not requested or approved for poles, ducts, conduits and rights of way, we shall not rule on the parties proposed rates. Accordingly, the parties shall not include any

rates for poles, ducts, conduits & rights of way in the signed Agreement which incorporates our decisions herein.

B. Attachment III - Network Elements

Sections	Title
13.4.2.25 - 13.4.2.25.6.3	Performance measures and standards for Line Information Database (LIDB)

MCIm's Proposed Language and Rationale

13.4.2.25 BST shall provide LIDB performance that complies with the following standards:

13.4.2.25.1 There shall be at least a 99.9% reply rate to all query attempts.

13.4.2.25.2 Queries shall time out at LIDB no more than 0.1% of the time.

13.4.2.25.3 Date in LIDB replies shall have at no more than 2% unexpected data values, for all queries to LIDB.

13.4.2.25.4 No more than 0.01% of all LIDB queries shall return a missing subscriber record.

13.4.2.25.5 There shall be no defects in LIDB Data Screening of responses.

13.4.2.25.6 Group troubles shall occur for no more than 1% of LIDB queries. Group troubles include:

13.4.2.25.6.1 Missing Group - When reply is returned "vacant" but there is no active record for the 6-digit NPA-NXX group.

13.4.2.25.6.2 Vacant Code - When a 6-digit code is active but is not assigned to any subscriber on that code.

13.4.2.25.6.3 Non-Participating Group and unavailable Network Resource - should be identified in the LARG (LIDB Access Routing

Guide) so MCIm does not pay access for queries that will be denied LIDB.

MCIm argues that to guarantee service to its customers, MCIm must have agreed upon performance standards for LIDB. According to MCIm, BST's Tariff FCC No. 1 references Technical Publication TR-TSV-000905 for immediate action limits, acceptance limits and maintenance limits. In addition, MCIm states that BST references TR-TSV-000954 for acceptance testing. These are the same type of requirements that are reflected in MCIm's proposed language. MCIm concludes that conforming to the contract requirements would ensure that BST is providing this service at parity to that which it provides itself and other subscribers.

BellSouth's Proposed Language and Rationale

13.4.2.25 With the exception of 13.4.2.25.3, which will be implemented on the effective date of this Agreement, BellSouth shall utilize its best efforts to implement the performance measurements delineated in 13.4.2.25.1 and 13.4.2.25.2 within 6 months of the effective date of this Agreement.

13.4.2.25.1 Percent messages processed within one second.

13.4.2.25.2 Percent LIDB queries handled in a round trip time of two seconds or less.

13.4.2.25.3 BellSouth and MCIm agree to establish a LIDB forum that may included representatives from other CLECs. Said forum shall determine other measurements necessary to demonstrate service parity.

13.4.2.25.4 To identify CLEC-by-CLEC performance, approximately six months development time is required.

BellSouth argues that the Commission's decision clearly stated that "BellSouth provide to AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." BellSouth argues that its proposal is consistent with the Commission's decision. BellSouth states that the measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCIm vis a vis its own retail customers. BellSouth asserts

that to adopt specific benchmarks, as proposed by MCIm, is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCIm that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail purposes.

We ordered MCIm and BellSouth to develop direct measures of quality and performance standards for services. The companies, however, have not agreed on performance standards for Line Information Database. BellSouth's proposed language on standards is vague and less specific than MCIm's proposed language. BellSouth asserts that it does not track and measure for itself the same level that MCIm requests. BellSouth does not assert that it cannot provide MCIm's requested standards. MCIm states that its standards are the same as those described in Technical Publications-TR-TSV-000905 and TR-TSV-000954. These technical publications are referenced in BellSouth's FCC Tariff No. 1 regarding standards for immediate action limits, acceptance limits, maintenance limits, and acceptance testing. MCIm's proposed standards in its proposed agreement were also admitted into the record of this proceeding as Exhibit 27, attachment to MCIm witness Ron Martinez's testimony. Upon consideration, MCIm's proposed performance standards appear to be within reason. Therefore, we hereby approve MCIm's language for LIDB performance standards. Accordingly, the parties shall include MCIm's language in the arbitrated Agreement.

C. Attachment IV - Interconnection

Sections Title

2.4.1-2.4.3 Compensation Mechanisms

MCIm's Proposed Language and Rationale

Section 2.4

No language provided.

Section 2.4.1

When calls from MCIm are terminating on BST's network through the BST tandem MCIm will pay to BST dedicated transport charges from the IP to the tandem for dedicated or common transport. MCIm

> shall also pay a charge for tandem switching, a dedicated or common transport to the end office (with mileage calculated as the weighted average of all end offices subtending that tandem), and end office termination.

Section 2.4.2

> When BST terminates calls to MCIm's subscribers using MCIm's switch, BST shall pay to MCIm dedicated transport charges from the IP to the MCIm Switching Center for dedicated or common transport. BST shall also pay to MCIm a charge symmetrical to its own charge for tandem switching, tandem-to-end-office transport, and end office termination as identified in Section 2.4.1.

Section 2.4.3

> MCIm may choose to establish direct trunking to any given end office. If MCIm leases trunks from BST, it shall pay charges for dedicated or common transport. For calls terminating from MCIm to subscribers served by these directly-trunked end offices, MCIm shall also pay an end office termination. For BST traffic terminating to MCIm over the direct end office trunking, compensation payable by BST shall be the same as that detailed in Section 2.4.2 above.

MCIm argues that according to the FCC Rules (47 C.F.R. §51.711(a)(2)), rates for transport and termination shall be symmetrical and reciprocal. MCIm contends that the Rules state that where the switch of a Competitive Local Exchange Carrier (CLEC) serves a geographical area comparable to the area served by the Incumbent Local Exchange Carrier's (ILEC) tandem, the ILEC's tandem interconnection rate should apply. MCIm states that it retains the right to pay direct trunking rates to avoid tandem charges if it incurs the expense of installing direct trunking to BST's end offices within the geographical area covered by MCIm's switch. MCIm maintains that this is appropriate under the Act as MCIm would be reducing the cost of transport, including tandem switching as defined by the Rules (47 C.F.R. §51.701).

MCIm contends that it would be justified in seeking compensation that is higher than BST's tandem rate under 47 C.F.R. §51.711(b), as the ILEC's high market penetration and resulting network utilization is likely to far outweigh any advantage a new

entrant might gain through deploying a more efficient network architecture.

BellSouth's Proposed Language and Rationale

Section 2.4

> MCIm may designate an IP at any Technically Feasible point including but not limited to any electronic or manual cross-connect points, collocations, telco closets, entrance facilities, and mid-span meets where mutually agreed upon. The transport and termination charges for local traffic flowing through an IP shall be as follows:

Section 2.4.1

> When calls from MCIm are terminating on BellSouth's network through the BellSouth tandem, MCIm will pay to BellSouth local interconnection rates.

Section 2.4.2

> When BellSouth terminates calls to MCIm's subscribers using MCIm's switch, BellSouth shall pay to MCIm local interconnection rates.

Section 2.4.3

> MCIm may choose to establish direct trunking to any given end office. If MCIm leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For calls terminating from MCIm to subscribers served by these directly trunked end offices, MCIm shall also pay BellSouth's local interconnection rates. For BellSouth traffic terminating to MCIm over the direct end office trunking, BellSouth shall pay the same interconnection rates.

BellSouth argues that these sections are not addressed in the arbitration; however, it does propose language.

Upon review, we find that MCIm's language exceeds the scope of the arbitration. Since we did determine the appropriate rates for tandem and end office switching, however, we find it appropriate to approve BST's language with modifications. The following language shall be inserted into the signed arbitrated Agreement: